



## FAIR POLITICAL PRACTICES COMMISSION

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January 21, 2004

The Honorable Bruce McPherson  
California State Senate  
State Capitol, Room 4081  
Sacramento, CA 95814

**Re: Your Request for Advice  
Our File No. A-04-008**

Dear Senator McPherson:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. May you raise unlimited amounts of money to your pre-Proposition 34 Lieutenant Governor account as long as it is used only for debt retirement?
2. May you continue to transfer money received by your active State Senate account to your pre-Proposition 34 Lieutenant Governor account as long as it is used only for debt retirement?
3. May you use money received by your pre-Proposition 34 Lieutenant Governor account prior to January 24, 2004, for expenses other than debt retirement, even if that money is spent after January 24, 2004?

### CONCLUSIONS

1. Yes. Subject to the cap of total net debt outstanding, you may continue to raise unlimited amounts of money on or after January 24, to your pre-Proposition 34 account so long as it is used only for debt retirement. Prior to January 24, 2004, no such limitation applies.

2. Yes.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

3. Yes. The use of funds already on hand on January 24, 2004, is governed in the circumstances you describe by section 89519, pertaining to surplus funds. The amount of funds on hand on January 24, 2004, however, will reduce the amount of net debt the committee will have that can be retired with new contributions.

### FACTS

You are the state senator from the Fifteenth Senatorial District. You were elected to your second term of office in November of 2000 and are termed out in 2004. The campaign committee for the 2000 Senatorial election remains open. You ran unsuccessfully for Lieutenant Governor in November of 2002 and the campaign committee for that election remains open with debt remaining from the date of the election.

### ANALYSIS

Your question requires us to interpret section 85321, concerning fundraising for pre-Proposition 34 debt, together with section 85316 (Proposition 34 limits on post-election fundraising), regulation 18531.6 interpreting those two sections, and newly-adopted regulation 18531.61, effective on January 24, 2004, which also governs these two sections.

Proposition 34 limits contributions from persons to legislators to \$3,000 per election (§ 85301(a)), and limits contributions from small contributor committees to legislators to \$6,000 per election (§ 85302(a)).<sup>2</sup> In addition, Proposition 34 provides that a state candidate may not personally loan his or her campaign an outstanding amount of more than \$100,000. (§ 85307.)

The Act has two rules about post-election fundraising: a general rule applicable to elections conducted under the Proposition 34 limits, and a more specific rule applicable to elections held prior to January 1, 2001.

For elections conducted under Proposition 34's limits, section 85316 restricts post-election fundraising as follows:

“A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution *does not exceed net debts outstanding from the election*, and the contribution does not otherwise exceed the applicable contribution limit for that election.” (Emphasis added.)

For elections held prior to January 1, 2001, section 85321 states:

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<sup>2</sup> These contribution limits have been adjusted for inflation to \$3,200 and \$6,400, respectively, for elections occurring after January 1, 2003. (§ 83124; regs. 18544 and 18545.)

*“Notwithstanding any other provision of this chapter, if a candidate for elective state office or the candidate’s controlled committee had net debts resulting from an election held prior to January 1, 2001, contributions to that candidate or committee for that election are not subject to the limits of Sections 85301 and 85302.”* (Emphasis added.)

Section 85321 was added to the Act by SB 34, cleanup legislation that amended Proposition 34 nine months after the initiative took effect. (Stats. 2001, Ch. 241, effective September 4, 2001.) Section 85321 contains the phrase “[n]otwithstanding any other provision of this chapter,” referring to Chapter 5 of the Act. The use of this phrase constitutes “an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern.” [Citations omitted.] *People v. DeLaCruz* (1993) 20 Cal.App.4<sup>th</sup> 955, 963.

In addition, section 85316 is a general provision about post-election fundraising, and section 85321 is a more specific and later-enacted provision addressing fundraising for debts from pre-Proposition 34 elections. It is a recognized principle of statutory construction that a specific provision relating to a particular subject will govern a general provision, and that if there is a conflict between two provisions, the later enacted provision will control. *Woods v. Young* (1991) 53 Cal.3d 315, 325, and *Corona-Norco Unified School Dist. v. City of Corona* (1993) 13 Cal.App.4<sup>th</sup> 1577, 1584.

In October of 2001, the Commission adopted regulation 18531.6, interpreting section 85316. The regulation embodied the Commission’s determination that section 85316’s net-debt fundraising limitation did *not* apply to committees established for elections occurring prior to the effective date of Proposition 34, stating:

**“18531.6. Treatment of Debts Outstanding After an Election.**

(a) Pre-2001 Elections. Government Code section 85316 does not apply to a candidate for elective state office in an election held prior to January 1, 2001.

(1) There are no contribution limits in effect for elections held prior to January 1, 2001 for contributions made on or after January 1, 2001.

(2) Contributions for an election held prior to January 1, 2001 may be accepted in an amount that exceeds net debts outstanding.

(b) 2001 and Subsequent Elections. Government Code section 85316 applies to a candidate for elective state office in an election held on or after January 1, 2001, as follows:

(1) The contribution limits of Government Code sections 85301 and 85302 apply to any candidate controlled

committee formed on or after January 1, 2001, whether the committee is designated for an election held pre- or post-January 1, 2001.

(2) Beginning January 1, 2001, contributions received by any candidate controlled committee formed prior to January 1, 2001, for an election held after January 1, 2001, are subject to the limits of Government Code sections 85301 and 85302.

(3) Transfers to a committee formed for an election held on or after January 1, 2001, are subject to the requirements of 2 Cal. Code Regs. section 18536.

(c) A candidate for elective state office subject to subdivision (b) of this regulation may use contributions accepted pursuant to Government Code section 85316 only for payment of net debts outstanding for an election.

¶...¶

The amount of the net debts outstanding shall be reduced as additional funds are received. The candidate and his or her controlled committee(s) may accept contributions made after the date of an election, if such contributions do not exceed the amount of net debts outstanding on the date the contribution is received. Any contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.

(e) *Notwithstanding subdivision (b), this regulation does not apply to a candidate for statewide elective office in an election held before November 6, 2002.*" (Reg. 18531.6, italics added.)

On January 14, 2004, the Commission amended regulation 18531.6 on an emergency basis and adopted emergency regulation 18531.61. Together, these two regulations embody the Commission's determination that section 85316 applies to committees formed for elections occurring prior to the effective date of Proposition 34. The effective date of the amended and new regulations is January 24, 2004. Regulation 18531.6, which did not apply the limitations of section 85316 to pre-34 committees, has been amended to limit the regulation's application to contributions accepted prior to January 24, 2004. For contributions received on or after January 24, 2004, newly adopted emergency regulation 18531.61 will apply. That regulation states:

**“§18531.61. Treatment of Debts Outstanding After an Election – Contributions Accepted on or After January 24, 2004.**

(a) As of January 24, 2004, a contribution for an election, regardless of when held, may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election. For purposes of section 85316, ‘the applicable contribution limit for that election’ means the contribution limits, if any, as provided in Government Code sections 85301 and 85302 applicable on the date of the election.

(b) Transfers to a committee formed for an election held on or after January 1, 2001, or November 6, 2002, for statewide elective office, are subject to the requirements of 2 Cal. Code Regs. section 18536.

(c) A candidate for elective state office subject to subdivision (a) of this regulation may use contributions accepted pursuant to Government Code sections 85316 and 85321 only for payment of net debts outstanding for an election.

(d) For purposes of this section, ‘net debts outstanding’ includes the following:

(1) An amount necessary to cover the cost of raising funds as permitted under this section;

(2) Any costs associated with complying with the post-election requirements of this Title and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; and

(3) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to an election, less the sum of:

(A) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler’s checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value; and

(B) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits,

returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

The amount of the net debts outstanding shall be reduced as additional funds are received. The candidate and his or her controlled committee(s) may accept contributions made after the date of an election, if such contributions do not exceed the amount of net debts outstanding on the date the contribution is received. Any contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.”

*Question 1: May you raise unlimited amounts of money to your pre-Proposition 34 Lieutenant Governor account as long as it is used only for net debt retirement?*

On or after January 24, as long as your Lieutenant Governor committee has net debt you may continue to raise funds to retire that debt, as allowed by section 85316. The amount that may be raised in total, however, is capped at the amount of net debt outstanding. (§ 85316.) The individual contributions are themselves not limited by sections 85301 or 85302. (Reg. 18531.61, subd. (a).) Prior to January 24, 2004, the funds raised are not subject to the limitations of section 85316. (Amended Reg. 18531.6.)

*Question 2: May you transfer money received by your current 2000 State Senate committee to your Lieutenant Governor account so long as it is used only for debt retirement?*

Section 85316 governs “contributions” received by a candidate after the date of an election. Funds, however, transferred between a given candidate’s own election committees – as is the case posed here – are not considered “contributions.” (*Reno* Advice Letter, A-00-038.) Therefore, funds may be transferred between your two committees without regard to the net debt fundraising limitation.

Funds transferred to the Lieutenant Governor committee, a committee subject to the surplus funds rules, may be used to pay the committee’s debts or for any other purpose described in section 89519, the surplus funds statute.<sup>3</sup> (*Ma* Advice Letter, A-02-005.)

Beginning January 24, 2004, the Senate committee can accept new contributions *only* to the extent the committee has net debt and then may be used solely to pay that debt. (Emergency reg. 18531.61.). Since the Senate committee has no net debt, it may

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<sup>3</sup> Section 89519 describes the permissible uses of surplus funds belonging to a candidate and defines the triggering event as the latter date of either: 1) the date the candidate leaves office (the office for which the committee was created), or 2) the end of the post-election reporting period following the defeat of the candidate. (§ 89519, subd. (a); copy enclosed.) Because your bid for Lieutenant Governor was unsuccessful, any money held by the committee after payment of debts is considered surplus.

not accept new contributions on or after January 24, 2004. Therefore, any transfers from the Senate committee to the Lieutenant Governor committee necessarily will consist of funds possessed by the Senate committee *prior* to January 24, 2004.

*Question 3: May you use money received by your pre-Proposition 34 Lieutenant Governor account prior to January 24, 2004, for expenses other than debt retirement, even if that money is spent after January 24, 2004?*

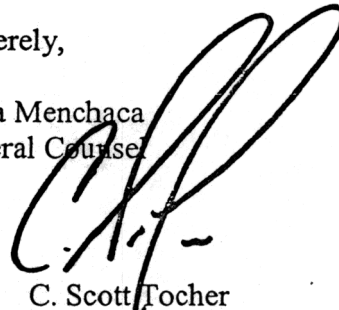
Yes. As discussed above, the funds presently in your Lieutenant Governor committee are surplus and subject to the rules of section 89519. While section 85316 only allows funds raised pursuant to that statute to be used for payment of net debt, and while that statute will apply on January 24 and beyond, the funds *currently* on hand in your committee are not subject to that rule because they were obtained by your committee prior to January 24, 2004, and were not raised pursuant to section 85316. Thus, the funds may be used for any purpose consistent with the specified list contained in section 89519.

We note, however, that as of January 24, 2004, section 85316 will apply, and any funds raised on that date or after must be applied to the committee's net debt only. Moreover, all funds on hand on January 24, including funds transferred from the Senate committee as described in Question 2, must be used to calculate the Lieutenant Governor committee's net debt outstanding on January 24 and will reduce, dollar for dollar, the amount of debt for which new contributions may be received. (Reg. 18531.61, subd. (d)(3)(A).)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink, appearing to read 'C. Scott Tocher', is written over the typed name and title.

By: C. Scott Tocher  
Counsel, Legal Division

CST:jg

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